

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JUDGE DANIELS ORIGINAL

'07 CIV 9895

NICOLE MILLER, LTD. d/b/a KOBRA  
INTERNATIONAL, LTD., a New York  
Corporation,

Plaintiff,

- against -

DIANE GILMAN d/b/a DGBZ Inc., a New  
York Corporation; HSN INTERACTIVE,  
LLC, a Florida Corporation, HOME  
SHOPPING NETWORK, INC., a Florida  
Corporation; HSN LP, a Florida Corporation;  
JOHN DOES 1-15; and XYZ  
CORPORATIONS 1-15,

Defendants.

Civil Action No.:

**COMPLAINT FOR COPYRIGHT  
INFRINGEMENT, UNFAIR  
COMPETITION AND FALSE  
DESIGNATION OF ORIGIN AND  
UNLAWFUL AND DECEPTIVE ACTS  
AND PRACTICES  
(JURY TRIAL DEMANDED)**

FILED  
U.S. DISTRICT COURT  
2007 NOV - 8 PM 1:53  
S.D. OF N.Y.

Plaintiffs Nicole Miller, Ltd. d/b/a Kobra International, Ltd. hereby file this Complaint on personal knowledge as to their own activities and on information and belief as to the activities of others:

**THE PARTIES**

1. Plaintiffs Nicole Miller, Ltd. d/b/a Kobra International, Ltd. is a corporation organized and existing under the laws of the State of New York, having its principal place of business at 525 Seventh Avenue, New York, New York 10018. Nicole Miller, Ltd. and Kobra International, Ltd. are collectively referred to as "Nicole Miller" or "Plaintiff."

2. Upon information and belief, Defendant Diane Gilman d/b/a DGBZ Inc. (“Gilman”) is a corporation organized and existing under the laws of the State of New York, transacting business within the State of New York and throughout the United States, and having its principal place of business at 141 West 36<sup>th</sup> Street, 16<sup>th</sup> Floor, New York, NY 10018.

3. Upon information and belief, Defendant HSN Interactive, LLC. is a Florida limited liability company, transacting business and contracting to supply goods within the State of New York and throughout the United States through its website located at <www.hsn.com>, and having its principal place of business at 1 HSN Drive, St. Petersburg, Florida 33729.

4. Upon information and belief, Defendant Home Shopping Network, Inc. is a Florida corporation, transacting business and contracting to supply goods within the State of New York and throughout the United States through its website located at <www.hsn.com>, and having its principal place of business at 152 W. 57th Street, New York, New York 10019.

5. Upon information and belief, Defendant HSN, LP. is a Florida limited partnership, transacting business and contracting to supply goods within the State of New York and throughout the United States through its website located at <www.hsn.com>, and having its principal place of business at 1 HSN Drive, St. Petersburg, Florida 33729. HSN Interactive, LLC., Home Shopping Network, Inc. and HSN, LP. are collectively referred to as “HSN.” HSN is a global multi-channel retailer who transacts business and contracts to supply goods through its cable television channel and online through its website <www.hsn.com> to customers within the State of New York and throughout the United States.

6. Defendants John Does 1-15 and XYZ Corporations 1-15, whose identities and addresses are presently unknown to Nicole Miller, are individuals and corporate entities that, upon information and belief, have made, imported, offered to sell or sold to the Defendants the

infringing items complained of herein. The Complaint herein will be amended, if appropriate, to include the name or names of these individuals when such information becomes available. Gilman, HSN, John Does 1-15 and XYZ Corporations 1-15 may be referred to separately or collectively as "Defendants."

### **JURISDICTION AND VENUE**

7. This is an action for: (a) copyright infringement in violation of the Copyright Law, 17 U.S.C. §§501, *et. seq.*; (b) unfair competition and false designation of origin in violation of 15 U.S.C. §1125(a); (c) unlawful and deceptive acts and practices in violation of N.Y. Gen. Bus. Law §349; and (d) unfair competition under New York state law, all of which activities have occurred in this District and elsewhere in interstate commerce.

8. Subject matter jurisdiction for the claim of copyright infringement and unfair competition and false designation of origin is proper in this Court pursuant to 28 U.S.C. §§1331, 1332, 1338(a), 17 U.S.C. §501 and 15 U.S.C. §1125(a). Supplemental jurisdiction for the claims of unlawful deceptive acts and practices and unfair competition is proper in this Court pursuant to 28 U.S.C. §1367 because these claims form part of the same case or controversy as the claim for copyright infringement.

9. This Court has personal jurisdiction over the Defendants in that Defendants do business and contract to supply goods throughout the State of New York including this District.

10. Venue is proper in this District pursuant to 28 U.S.C. §§1391 and 1400(a) in that the Defendants are subject to personal jurisdiction in this Judicial District.

### **FACTUAL BACKGROUND**

#### **A. NICOLE MILLER PRODUCTS AND SALE OF ITS COPYRIGHTED DESIGN**

11. Nicole Miller is one of the leading designers of clothing and fashion accessories in the World. Nicole Miller's designs have been prominently featured in numerous magazines,

television shows, and other forms of media. Nicole Miller's designs are also frequently worn by celebrities at prestigious events. Accordingly, Nicole Miller has become a preeminent symbol of luxury apparel and fashion goods of the highest quality ("Nicole Miller Products").

12. Nicole Miller is the exclusive owner of the copyright in a fabric design known as "Tiki," which is the subject of U.S. Copyright Registration No. VA-1-387-646 registered on December 28, 2006 (the "Tiki Design" or the "Nicole Miller Copyright"). A true and accurate copy of the Certificate of Registration and related deposit for the Tiki Design is attached hereto as Exhibit A. In January 2006, Nicole Miller introduced the Tiki Design on dress style # BH0351, and has sold more than 2,000 dresses with the Tiki Design.

13. The registration of the Tiki Design creates a legal presumption in favor of Nicole Miller with respect to the ownership of and the validity of the copyrights in these works.

14. Nicole Miller Products bearing the Tiki Design are sold in high-end department stores, such as Bloomingdale's, Neiman Marcus and Nordstrom, as well as in Nicole Miller boutiques throughout this District and elsewhere in the United States. A copy of the Nicole Miller store locator for New York is attached hereto as Exhibit B. Nicole Miller has spent millions of dollars and has expended significant effort in advertising, promoting and developing the Nicole Miller Products throughout the world. As a result of advertising and expenditures, Nicole Miller has established considerable goodwill in the Nicole Miller Products and the Tiki Design.

**B. GILMAN DEFENDANT'S UNLAWFUL ACTS**

15. On or about May 2007, Nicole Miller learned that Gilman was selling blouses bearing designs identical to the Tiki Design (the "Infringing Products") through the HSN website

<hsn.com> as well as through the HSN television program. True and accurate copies of photographs of the Infringing Products are attached hereto as Exhibit C.

16. On May 15, 2007, Nicole Miller, through its attorneys, Greenberg Traurig LLP, sent a cease and desist letter to Gilman. A true and accurate copy of the cease and desist letter is attached hereto as Exhibit D.

17. Upon information and belief, Gilman has distributed and/or sold the Infringing Products throughout the United States, including in New York and this District.

18. Upon information and belief, Gilman first sold the Infringing Products on or about March 30, 2007.

19. Upon information and belief, Gilman has willfully and/or negligently infringed the Nicole Miller Copyright by manufacturing, distributing, selling and/or offering for sale infringing products bearing the Tiki Design without Nicole Miller's authorization. Nicole Miller has neither licensed nor authorized Gilman to reproduce, adapt and/or display Nicole Miller's copyrighted Tiki Design or to manufacture, distribute, advertise, sell or offer to sell apparel that are infringing copies of the Nicole Miller Products.

20. Upon information and belief, the conduct of Gilman was and is willfully done with knowledge of, and/or reckless disregard for, Nicole Miller's rights in its copyrighted Tiki Design for the purpose of damaging Nicole Miller's business and profiting from the unauthorized manufacture, distribution, and sale of products bearing the Nicole Miller Copyright.



**C. HSN DEFENDANTS' UNLAWFUL ACTS**

21. On or about May 2007, Nicole Miller learned that HSN was advertising, offering for sale and selling the Infringing Products. True and accurate copies of printouts showing the Infringing Products being offered for sale are attached hereto as Exhibit E.

22. On May 15, 2007, Nicole Miller, through its attorneys sent a cease and desist letter to HSN. A true and accurate copy of the cease and desist letter is attached hereto as Exhibit F.

23. Upon information and belief, HSN has distributed, offered for sale and/or sold the Infringing Products in New York and this District.

24. Upon information and belief, HSN first sold the Infringing Products on or after March 2007.

25. Upon information and belief, HSN has willfully and/or negligently infringed the Tiki Design by selling and/or offering for sale the Infringing Products without Nicole Miller's authorization. Nicole Miller has neither licensed nor authorized HSN to advertise, sell or offer to sell apparel that are infringing copies of the Nicole Miller Products, including the Tiki Design.

26. Upon information and belief, the conduct of HSN was and is willfully done with knowledge of, and/or reckless disregard for, Nicole Miller's rights in the Tiki Design for the purpose of damaging Nicole Miller's business and profiting from the unauthorized manufacture, distribution, and sale of the Infringing Products.

**FIRST CLAIM FOR RELIEF**  
**(Copyright Infringement Under 17 U.S.C. §501)**

27. Nicole Miller realleges and incorporates by reference the allegations above.

28. Nicole Miller is the owner of the Nicole Miller Copyright.

29. Nicole Miller has never authorized Defendants to make copies of the Nicole Miller Copyright, or to distribute or display the Tiki design. Defendants' acts of copying, distributing and displaying the Nicole Miller Copyright, which have been willful and deliberate, have been performed without license, authorization or consent from Nicole Miller.

30. As a direct and proximate result of Defendants' acts, Nicole Miller has suffered damages to its valuable Nicole Miller Copyright, and other damages in an amount to be proved at trial.

31. Nicole Miller does not have an adequate remedy at law, and will continue to be damaged by Defendants' copyright infringement unless this Court enjoins Defendants from such fraudulent business practices.

32. Defendants have realized unjust profits, gains and advantages as a proximate result of its infringement.

### **SECOND CLAIM OF RELIEF**

#### **(Unfair Competition and False Designation of Origin Under 15 U.S.C. § 1125(a))**

33. Nicole Miller realleges and incorporates by reference the allegations above.

34. The Infringing Products are nearly identical or substantially similar to the copyrighted Tiki Design and, as such, Defendants' sale of the Infringing Products is likely to cause confusion to the general purchasing public.

35. By manufacturing and/ or arranging for manufacture of, advertising, distributing, offering for sale and selling the Infringing Products that bear a design identical or substantially similar to the copyrighted Tiki Design, Defendants misrepresent and falsely describe to the general public the origin and source of the Infringing Products and create a likelihood of confusion by ultimate purchasers and to others seeing the Infringing Products as to both the source and sponsorship of such merchandise.

36. Defendants' unlawful, unauthorized and unlicensed manufacturing, advertising, distributing, offering for sale and/or selling of the Infringing Products creates express and implied misrepresentations that the Infringing Products were created, authorized or approved by Nicole Miller, all to Defendants' profit and Nicole Miller's great damage and injury.

37. Defendants have realized unjust profits, gains and advantages as a proximate result of their unfair competition.

38. Nicole Miller has no adequate remedy at law. If Defendants' activities are not enjoined, Nicole Miller will continue to suffer irreparable harm and injury to its goodwill and reputation.

### **THIRD CLAIM OF RELIEF**

#### **( Unlawful Deceptive Acts and Practices Under New York General Business Law § 349)**

39. Nicole Miller realleges and incorporates by reference the allegations above.

40. On information and belief, Defendants, without Nicole Miller's authorization or consent, and having knowledge of Nicole Miller's well-known and prior rights in the Nicole Miller Copyright have manufactured and/ or arranged for manufacture of, advertised, distributed, offered for sale and sold Infringing Products to the consuming public in direct competition with Nicole Miller Products.

41. Defendants' use of copies or simulations of the Nicole Miller Copyright is likely to cause and is causing confusion, mistake and deception among the general purchasing public as to the origin of the Infringing Products, and is likely to deceive the public into believing the Infringing Products being sold by Defendants originate from, are associated with, or are otherwise authorized by Nicole Miller.

42. Defendants' deceptive acts and practices involve public sales activities of a recurring nature.



43. Defendants have realized unjust profits, gains and advantages as a proximate result of their unlawful deceptive acts and practices.

44. Nicole Miller has no adequate remedy at law and, if Defendants' activities are not enjoined, Nicole Miller will continue to suffer irreparable harm and injury to its goodwill and reputation.

#### **FOURTH CLAIM OF RELIEF**

##### **(Unfair Competition Under New York State Law)**

45. Nicole Miller realleges and incorporates by reference the allegations above.

46. Nicole Miller has built up valuable goodwill in the Nicole Miller Copyright.

47. Defendants' use of the Nicole Miller Copyright is likely to and does permit Defendants to palm off the Infringing Products as those of Nicole Miller, all to the detriment of Nicole Miller and the unjust enrichment of Defendants.

48. Defendants, upon information and belief, with full knowledge of the fame of Nicole Miller and the Nicole Miller Copyright, intended to and did trade on the goodwill associated with the Nicole Miller Copyright and has misled the public into assuming a connection between Nicole Miller and Defendants by manufacturing, arranging for manufacture, advertising, selling and/or distributing the Infringing Products.

49. The acts of Defendants mislead and deceive the public as to the source of Defendants' goods, permit and accomplish the palming off of Defendants' goods as those of Nicole Miller and falsely suggest a connection with Nicole Miller, and therefore constitute acts of unfair competition with Nicole Miller in violation of the laws of the State of New York.

50. Defendants have realized unjust profits, gains and advantages as a proximate result of their unfair competition.

51. Defendants' acts have and will continue to cause Nicole Miller irreparable harm unless enjoined by this Court. Nicole Miller has no adequate remedy at law.

**PRAYER FOR RELIEF**

WHEREFORE, Nicole Miller prays for the following relief against Defendants:

1. That Defendants, their officers, agents, servants, employees, representatives, confederates, successors and assigns, and all persons and entities acting for, with, by, through, or under it be permanently enjoined from directly or indirectly infringing the Nicole Miller Copyright in any manner, including, but not limited to, reproducing, adapting, and/or displaying the Nicole Miller Copyright by manufacturing, distributing, importing, exporting, advertising, selling, and/or offering for sale, or causing others to do so, any product, including without limitation clothing, bearing designs substantially similar to the Nicole Miller Copyright;

2. That Defendants be required to effectuate the recall, removal, and return from commercial distribution and/or public display of:

(a) Any product bearing a design substantially similar to the Nicole Miller Copyright manufactured, distributed, imported, exported, advertised, sold, and/or offered for sale by Defendants, their officers, agents, servants, employees, representatives, confederates, successors and assigns, and all persons and entities acting for, with, by, through, or under it; and

(b) Any promotional and/or advertising materials, labels, packaging, or other items bearing a design substantially similar to the Nicole Miller Copyright used or displayed by Defendants, their officers, agents, servants, employees, representatives,

confederates, successors and assigns, and all persons and entities acting for, with, by, through, or under it; and

(c) Any mold, pattern, or other item used by Defendants, their officers, agents, servants, employees, representatives, confederates, successors and assigns, and all persons and entities acting for, with, by, through, or under it, to manufacture any product, promotional and/or advertising materials, labels, packaging, or other item bearing a design substantially similar to the Nicole Miller Copyright;

3. That Defendants be required to deliver up for destruction all of the items called for by Paragraph 2 of this Prayer for Relief, above, as well as any remaining products, advertising, packaging, molds, patterns, or other items bearing a design substantially similar to the Nicole Miller Copyright, or used to manufacture any item bearing a design substantially similar to the Nicole Miller Copyright, that are in Defendants' custody or control;

4. That Defendants, within thirty (30) days after service of judgment with notice of entry thereof upon it, be required to file with the Court and serve upon Plaintiffs a written report under oath setting forth the details of how Defendants have complied with Paragraphs 1 through 3 of this Prayer for Relief, above;

5. For an award of actual damages sustained by Plaintiffs;

6. For an award of Defendants' profits attributable to its copyright infringement;

7. If elected by Plaintiffs, for the maximum statutory damages as permitted under the Copyright Act;

8. For such other amounts as may be proper under 17 U.S.C. § 504;

9. For an award of costs and attorneys' fees pursuant to 17 U.S.C. § 505;

10. For prejudgment interest as permitted by law;

11. For such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a jury trial on all triable issues raised by this Complaint.

Dated: November 8, 2007  
New York, New York

Respectfully submitted,

GREENBERG TRAURIG, LLP

By: 

G. Roxanne Elings (GE 8321)

Deidre D. Blocker (DB 0762)

200 Park Avenue, MetLife Building

New York, NY 10166

(212) 801-9200

*Attorney for Plaintiffs*

*Nicole Miller, Ltd. d/b/a Kobra International, Ltd.*

# EXHIBIT A



01/10/2007 WED 15:02 FAX

0002

## Certificate of Registration



This Certificate is issued under the seal of the Copyright Office in accordance with title 17, United States Code. It attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Myriam Peters*  
 Register of Copyrights, United States of America



12 28 07

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1	NAME OF THIS WORK		NATURE OF THIS WORK	
	TUB		Design on Fabric	
Previous or Alternative Titles				
Publication as a Contribution: If this work was published in a newspaper, magazine, journal, or other periodical, give the title of the publication and the date of publication.				
If published in a periodical, give the title of the periodical, the volume, the issue, and the date of publication.				
2	NAME OF AUTHOR		DATES OF BIRTH AND DEATH	
	Kobres International, Ltd.		Year Born Year Died	
NOTE	Was this work created in the work of hire?		Was this author's contribution in the work of hire?	
	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No	
Under the law, the author of a work of art is the person who creates the work. If the work is a contribution to a collective work, the author is the person who creates the contribution. If the work is a work of hire, the author is the person for whom the work was created.				
Nature of Authorship: Check appropriate boxes (see instructions). <input type="checkbox"/> Original and complete <input type="checkbox"/> Map <input type="checkbox"/> Technical drawing <input type="checkbox"/> Photograph <input type="checkbox"/> Sculpture <input type="checkbox"/> Text <input type="checkbox"/> Reproduction of work of art <input type="checkbox"/> Literary design <input type="checkbox"/> Architectural work				
Name of Author: Year Born Year Died Year Born Year Died				
3	NAME OF CONTRIBUTOR		NAME OF CONTRIBUTOR	
	Kobres International, Ltd.		Kobres International, Ltd.	
4	COPYRIGHT CLAIMANT(S)		DATE OF DEPOSIT RECEIVED	
	Kobres International, Ltd. 525 Seventh Avenue New York, NY 10018		DEC 28 2006	
Transfer of the Copyright: If the copyright is transferred, give the name of the transferee and the date of transfer. If the copyright is not transferred, check the box below.				
<input type="checkbox"/> Copyright is transferred to the transferee.				

MORE ON BACK

Copyright © 2006 by the Copyright Office, United States of America. All rights reserved. This form is available at [www.copyright.gov](http://www.copyright.gov).

Page 1 of 2

U.S. Government Printing Office: 2004-12-04 12:00:10

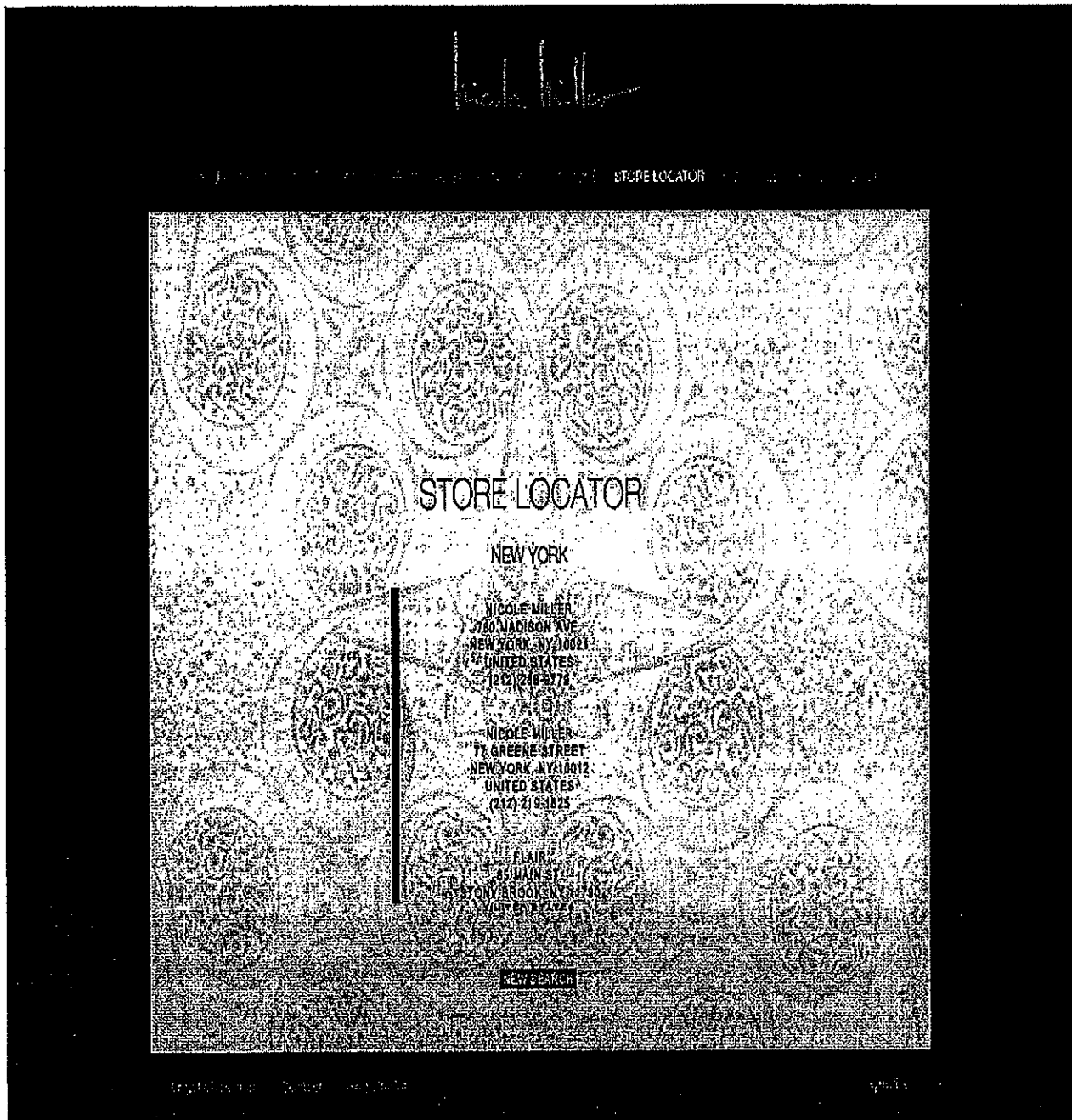


# EXHIBIT B



NICOLE MILLER

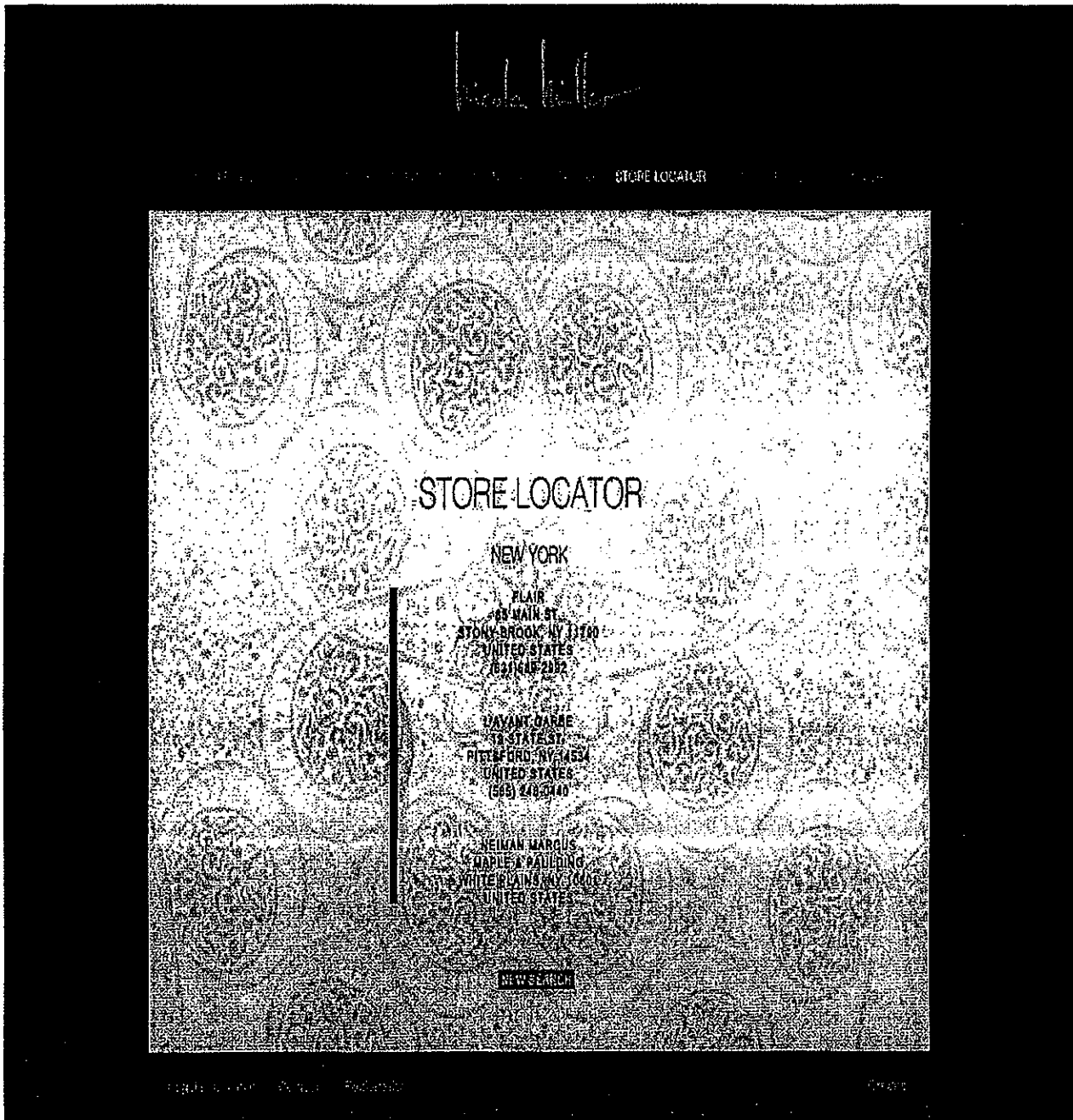
Page 1 of 1





NICOLE MILLER

Page 1 of 1



# EXHIBIT C

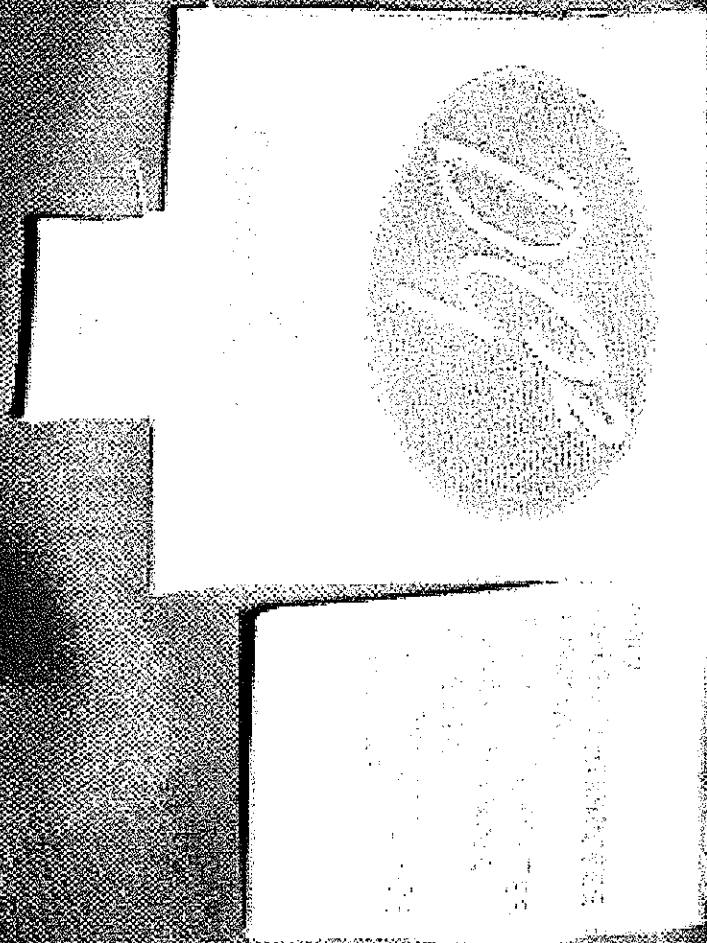














A black and white photograph showing a close-up of a shoe sole. A white, oval-shaped label is affixed to the sole. The label contains the handwritten text "DG<sup>2</sup>". Below the label, the words "by Diane Gilman" are printed in a serif font. The background is dark and textured, likely the surface of the shoe sole.

DG<sup>2</sup>

*by*  
**Diane Gilman**



# EXHIBIT D



# Greenberg Traurig

G. Roxanne Elings  
212-801-2148  
elingsr@gtlaw.com

May 15, 2007

**VIA OVERNIGHT DELIVERY**

Diane Gilman  
141 West 36th Street  
16th Floor  
New York, NY 10018

**Re: Infringement of Nicole Miller Copyrights**  
**Our reference: 66524.011500**

Dear Ms. Gilman:

We are intellectual property counsel for Kobra International, Ltd. d/b/a Nicole Miller ("Nicole Miller"), a world famous fashion house, which styles, manufactures and sells diverse articles of men's, women's and children's apparel, luggage, purses, and other accessories. In addition to owning exclusive rights in the trademark NICOLE MILLER and other marks, Nicole Miller owns all rights, title and interest in its original fabric designs, many of which are registered with the United States Copyright Office.

One such fabric design exclusively owned by Nicole Miller is known as "Tiki" ("Tiki Design"). The Tiki Design consists of a brown background print, with a flower design composed of a flower with petals stemming from the core. The border of the Tiki Design is a distinctive multicolor geometric pattern. Nicole Miller first began selling the Tiki Design in June 2005, and has registered the design with the Copyright Office. A copy of copyright registration for the Tiki Design is annexed hereto as Exhibit A.

Nicole Miller has expended substantial time, effort and money in developing and promoting its products, and has built a national – and worldwide – reputation and notoriety based on its high-quality original creations, including the Tiki Design.

We have learned that you have been selling apparel that is virtually identical to and directly copies Nicole Miller's Tiki Design (the "Infringing Goods"). See Exhibit B. Please be advised the sale of apparel that copies and is identical to Nicole Miller's copyrighted Tiki Design violates Nicole Miller's rights under United States Copyright laws. Any intentional and willful infringement may entitle Nicole Miller to recover statutory damages of up to \$150,000 or, in the alternative, to recover your profits from sales of these garments, in addition to Nicole Miller's costs and attorney's fees.

Please be advised that Nicole Miller has already initiated a lawsuit in the Southern District of New York against a manufacturer and two retailers for copyright infringement, in



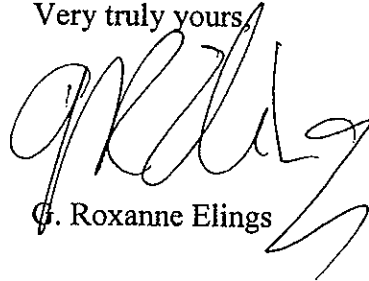
addition to an action in California. Accordingly, to fully resolve this matter, we demand that you immediately provide us with the following information:

1. Provide an accounting of any inventory of the Infringing Goods;
2. Provide the total number of units of the Infringing Goods distributed and/or sold to date and the total dollar amount received from such sales;
3. Provide a complete and accurate list of the names and addresses of all persons and entities to whom you have sold or distributed the Infringing Goods;
4. Provide a written statement that you have ceased any and all sale of the Infringing Goods, and will not otherwise infringe any of Nicole Miller's copyrighted designs in the future.

Because of the urgency of this matter, we request a response to our demands no later than the close of business on May 21, 2007. Should you fail to comply with these demands within the time period, we are instructed to take all legal steps necessary to halt the sales of the Infringing Goods, including the filing of a civil action.

The above does not constitute an offer of settlement and is sent without prejudice to any rights or claims of Nicole Miller, all of which expressly are reserved.

Very truly yours,



G. Roxanne Elings

cc: Nicole Miller

Enclosures

# **Exhibit A**

01/10/2007 WED 15:02 FAX

002

## Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Margaret Peters*

Register of Copyrights, United States of America



Form VA  
For Visual Arts  
United States Copyright Office

VA 1-387-848



U.S. Copyright Office, 1077 G Street, NE, Washington, DC 20002

12 28 2006

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1	Title of This Work <b>V</b>		NATURE OF THIS WORK <b>V</b> See Instructions	
	Tiki		Design on Fabric	
Previous or Alternative Titles <b>V</b>				
Publication as a Contribution: If this work was published in a newspaper, magazine, journal, or collection, give information about the official or unofficial contribution appearing. Title of Collection <b>V</b>				
If published in a periodical or serial give: Volume <b>V</b> Number <b>V</b> Issue Date <b>V</b> Page <b>V</b>				
2	NAME OF AUTHOR <b>V</b>		DATES OF BIRTH AND DEATH <b>V</b>	
	Kobra International, Ltd.		Year Born <b>V</b> Year Died <b>V</b>	
NOTE	Was this work created by the author? <input type="checkbox"/> Yes <input type="checkbox"/> No		Was this author's contribution to the work a: Appreciation <input type="checkbox"/> Yes <input type="checkbox"/> No Paraphrase <input type="checkbox"/> Yes <input type="checkbox"/> No	
	Author's Nationality or Domicile: Name of Country: <b>V</b> OR City of: <b>V</b> State: <b>V</b> Country: <b>V</b>		If the author is a person, is the work a: Original work <input type="checkbox"/> Yes <input type="checkbox"/> No Derivative work <input type="checkbox"/> Yes <input type="checkbox"/> No	
Nature of Authorship: Check appropriate boxes. See Instructions.				
<input type="checkbox"/> 3-Dimensional sculpture <input type="checkbox"/> Map <input type="checkbox"/> Technical drawing <input type="checkbox"/> 2-Dimensional artwork <input type="checkbox"/> Photograph <input type="checkbox"/> Text <input type="checkbox"/> Reproduction of work of art <input type="checkbox"/> Jewelry design <input type="checkbox"/> Architectural work				
3	Name of Author <b>V</b>		Dates of Birth and Death <b>V</b>	
	Year Born <b>V</b> Year Died <b>V</b>		Year Born <b>V</b> Year Died <b>V</b>	
4	Was this contribution to the work's work made for hire? <input type="checkbox"/> Yes <input type="checkbox"/> No		Was this author's contribution to the work a: Appreciation <input type="checkbox"/> Yes <input type="checkbox"/> No Paraphrase <input type="checkbox"/> Yes <input type="checkbox"/> No	
	Author's Nationality or Domicile: Name of Country: <b>V</b> OR City of: <b>V</b> State: <b>V</b> Country: <b>V</b>		If the author is a person, is the work a: Original work <input type="checkbox"/> Yes <input type="checkbox"/> No Derivative work <input type="checkbox"/> Yes <input type="checkbox"/> No	
Nature of Authorship: Check appropriate boxes. See Instructions.				
<input type="checkbox"/> 3-Dimensional sculpture <input type="checkbox"/> Map <input type="checkbox"/> Technical drawing <input type="checkbox"/> 2-Dimensional artwork <input type="checkbox"/> Photograph <input type="checkbox"/> Text <input type="checkbox"/> Reproduction of work of art <input type="checkbox"/> Jewelry design <input type="checkbox"/> Architectural work				
3	Year in Which Creation of This Work Was Completed		Country of First Publication of This Particular Work	
	2005		USA	
4	COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. <b>V</b>		DATE RECEIVED	
	Kobra International, Ltd. 525 Seventh Avenue New York, NY 10018		DEC 28 2006	
Transfer: If the claimant(s) named here is/are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. <b>V</b>		DATE RECEIVED		
		DEC 28 2006		
		FUNDS RECEIVED		

MORE ON BACK

Complete all applicable spaces (numbers 1-5) on the reverse side of this page.  
See detailed instructions.

and MUST BE  
Page 1 of 2 pages

**1. Yes**

NEW YORK.

Year of Registration V

.....

1. *What is the purpose of the study?*  
 2. *What are the research questions or hypotheses?*  
 3. *What is the study design?*  
 4. *What is the sample size and how was it selected?*  
 5. *What are the variables being measured?*  
 6. *What are the data collection methods?*  
 7. *What are the results of the study?*  
 8. *What are the conclusions of the study?*  
 9. *What are the limitations of the study?*  
 10. *What are the implications of the study?*

Name V Account Number

NEW YORK, N.Y. (UPI) —

1212-1869-1938

2000

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

12/26/06

\_\_\_\_\_

New York, NY 10018

Washington, DC 20505-0000

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U.S. Chamber of Commerce, 12-25-1961





**Exhibit B**

there's no place like...

HSN

hsn shopping bar

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## DG2 Embellished Tunic - Item: 236-561

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Blue



Coral



Fuchsia



White

HSN Price: \$69.90

Retail Value: \$100.00

Shipping &amp; Handling: \$6.95

▶  [size charts](#) [what is flexpay?](#)Quantity: ☐ Include a Gift Receipt/Message  
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DG2 Stretch Denim 5-Pocket Jeans

HSN Price: \$44.00



DG2 Pull-On Fully-Lined Palazzo Pants

HSN Price: \$52.00



Diane Gilman Choice of Belts

HSN Price: \$21.90

## Product Description

Embellished Tunic  
by DG2

- Lined georgette pullover.
- Embellished neck. Long, wide sleeves.
- Empire waist. Lined. Straight hem with side vents.
- **White:** crinkled georgette. Embellished V-neck. Empire waist. Silvertone Beads with sequins and pearly beads. White lining.
- **Coral:** crinkled georgette. Multicolored tribal pattern. V-neck and empire waist lined with tapestry ribbon. Orange lining.

- **Blue:** sheer chiffon blue ombre with green at hem. V-neck and empire waist lined with tapestry ribbon. Removable, multifaceted jeweled floral pin. Cuffs lined in the same tapestry ribbon. Blue lining.
- **Fuchsia:** goldtone floral design on fuchsia background. Notch neck and cuffs lined in goldtone fabric with goldtone beads, jewels and paillettes. Fuchsia lining.
- Approx. 28-1/2"L.
- 100% polyester. Hand wash, line dry.
- XS-3X.
- Imported.

Choose your style and mood for the day in this Embellished Tunic by DG2. Lovely sequins and flashy trim will cause your outlook to soar. Coral, fuchsia, white or blue.

#### About Diane Gilman...

From the steamy tropics to untamed animal prints, many of Diane Gilman's unique one-of-a-kind, limited-edition creations began their existence as hand-painted canvas designs that have been transferred to silk. This marvelous fabric is ideal for soaking up bold colors (not to mention sparkly sequins), creating a Signature line that will leave 'em speechless. For your more casual occasions, Diane has also introduced several exclusive new lines in cotton and silk twill featuring her characteristic embellishments and artisan achievements.

#### Customer Reviews

[review this product](#)

2 reviews

Average Rating 2.5 ★★☆☆☆

**silk worm is dead**

★★★☆☆ 05/14/2007

i agree i wait each year for the silk items but they are history! i will settle for a silk like look, but please pockets in the matching pants....

[report if inappropriate](#)

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► first select size  [size chart](#)

then select color

1 payment of \$69.90  [what is flexpay?](#)

Quantity:

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**BUY MORE FASHION AND SAVE** [see details](#)

**Email to a Friend**

Click a swatch to see item in this color




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[See all Diane Gilman](#)

### MORE CHOICES



[DG2 Stretch Denim 5-Pocket Jeans](#)

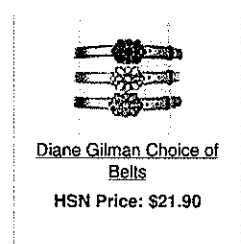
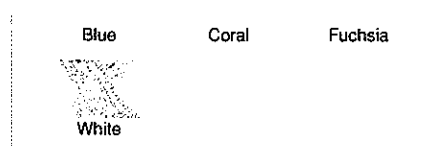
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# EXHIBIT F

# Greenberg Traurig

G. Roxanne Elings  
212-801-2148  
elingsr@gtlaw.com

May 15, 2007

**VIA OVERNIGHT DELIVERY**

HSN Interactive LLC  
Attn: Legal Department  
1 HSN Drive  
St. Petersburg, FL 33729

**Re: Infringement of Nicole Miller Copyrights**  
**Our reference: 66524.011500**

Dear Sir or Madam:

We are intellectual property counsel for Kobra International, Ltd. d/b/a Nicole Miller ("Nicole Miller"), a world famous fashion house, which styles, manufactures and sells diverse articles of men's, women's and children's apparel, luggage, purses, and other accessories. In addition to owning exclusive rights in the trademark NICOLE MILLER and other marks, Nicole Miller owns all rights, title and interest in its original fabric designs, many of which are registered with the United States Copyright Office.

One such fabric design exclusively owned by Nicole Miller is known as "Tiki" ("Tiki Design"). The Tiki Design consists of a brown background print, with a flower design composed of a flower with petals stemming from the core. The border of the Tiki Design is a distinctive multicolor geometric pattern. Nicole Miller first began selling the Tiki Design in June 2005, and has registered the design with the Copyright Office. A copy of copyright registration for the Tiki Design is annexed hereto as Exhibit A.

Nicole Miller has expended substantial time, effort and money in developing and promoting its products, and has built a national – and worldwide – reputation and notoriety based on its high-quality original creations, including the Tiki Design.

We have learned that Home Shopping Networks ("HSN") is selling apparel that is virtually identical to and directly copies Nicole Miller's Tiki Design (the "Infringing Goods"). See printouts from the HSN website as Exhibit B. Please be advised the sale of apparel that copies and is identical to Nicole Miller's copyrighted Tiki Design violates Nicole Miller's rights under United States Copyright laws. Any intentional and willful infringement may entitle Nicole Miller to recover statutory damages of up to \$150,000 or, in the alternative, to recover your profits from sales of these garments, in addition to Nicole Miller's costs and attorney's fees.

Please be advised that Nicole Miller has already initiated a lawsuit in the Southern District of New York against a manufacturer and two retailers for copyright infringement, in

Home Shopping Networks

May 15, 2007

Page 2

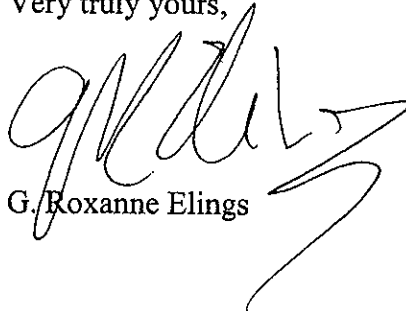
addition to an action in California. Accordingly, to fully resolve this matter, we demand that you immediately provide us with the following information:

1. Provide an accounting of any inventory of Infringing Goods;
2. Provide the total number of units of Infringing Goods distributed and/or sold to date and the total dollar amount received from such sales;
3. Provide a complete and accurate list of the names and addresses of all persons and entities to whom you have sold or distributed the Infringing Goods;
4. Provide a written statement that you have ceased any and all sale of the Infringing Goods, and will not otherwise infringe any of Nicole Miller's copyrighted designs in the future.
5. Immediately remove all postings and other references to the Infringing Goods on your website, your television program and any other materials, including but not limited to all marketing or promotional materials.

Because of the urgency of this matter, we request a response to our demands no later than the close of business on May 21, 2007. Should you fail to comply with these demands within the time period, we are instructed to take all legal steps necessary to halt the sales of the Infringing Goods, including the filing of a civil action.

The above does not constitute an offer of settlement and is sent without prejudice to any rights or claims of Nicole Miller, all of which expressly are reserved.

Very truly yours,



G. Roxanne Elings

cc: Nicole Miller

Enclosures

**Exhibit A**



01/10/2007 WRD 15:02 FAX

002

## Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Margareth Peters*

Register of Copyrights, United States of America



Form VA  
For a Work of the Visual Arts  
UNITED STATES COPYRIGHT OFFICE

VA 1-387-8415



U.S. Copyright Office, 1010 Locust Street, N.W., Washington, D.C. 20004

12 28 06

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1 Title of this Work **Titl** Nature of this Work **Design on Fabric**

Previous or Alternative Titles

Publication in a Collective Work. If the work was published in a collective work, give information about the collective work (title, author, publisher, etc.). If the work was not published in a collective work, leave this space blank.

If published in a periodical or serial, give: Volume Number Year Date Page

2 NAME OF AUTHOR **Kobra International, Ltd.** DATES OF BIRTH AND DEATH  
Year Born Year Died

## NOTE

Under the law, the "author" of a work is the person who creates the work. The author is not necessarily the person who publishes the work. For any part of this work that was not created by the author, give the name of the person who created it. For any part of this work that was not created by the author, give the name of the person who created it.

Was this work first published in the United States? ☐ Yes ☒ No  
Author's Nationality or Residence **U.S.A.**  
Was this Author's Contribution to the Work Original? ☐ Yes ☒ No

Nature of Authorship. Check appropriate boxes. See instructions.  
☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing  
☐ 2-Dimensional artwork ☐ Photograph ☐ Text  
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

Name of Author **b** Date of Birth and Death  
Year Born Year Died

Was this contribution to the work's "work made for hire"? ☐ Yes ☒ No  
Author's Nationality or Residence **U.S.A.**  
Was this Author's Contribution to the Work Original? ☐ Yes ☒ No

Nature of Authorship. Check appropriate boxes. See instructions.  
☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing  
☐ 2-Dimensional artwork ☐ Photograph ☐ Text  
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

3 Year in Which Creation of This Work Was Completed **2005** Date and Place of First Publication of This Particular Work  
Month Day Year **06 15 2005**  
Country **U.S.A.**

4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2.  
**Kobra International, Ltd.**  
**523 Seventh Avenue**  
**New York, NY 10018**  
Transfer of the claimant(s) named here in space 4 to (each) claimant named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.  
**DECLARATION RECEIVED**  
**DEC 28 2006**  
**ONE DEPOSIT RECEIVED**  
**DEC 28 2006**  
**FUNDS RECEIVED**

MORE ON BACK: Complete all applicable spaces (numbers 1-10) on the reverse side of this page. See detailed instructions. Sign the back at the bottom. Page 1 of 1 of 2 pages.

01/10/2007 WED 15:04 FAX

003

EXAMINED BY	<i>DA</i>	IN THE
CHECKED BY		OFFICE
<input type="checkbox"/> CORRESPONDENCE		NEW YORK

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work or for all earlier version of this work, already been made in the Copyright Office?

☐ Yes ☐ No. If your answer is "Yes," why is another registration being sought? (Check appropriate box) ☐☐ This is the first published edition of a work previously registered in unpublished form.☐ This is the first application submitted by this author or copyright claimant.☐ This is a changed version of the work submitted by applicant on this application.If your answer is "Yes," give: Previous Registration Number ☐ Year of Registration ☐

DERIVATIVE WORK OR COMPILATION Complete both space to best fit for a derivative work; complete only (b) for a compilation.

a. Preexisting Material: Identify any preexisting work or works that this work is based on or incorporates. ☐b. Material Added to This Work: Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ☐DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account. ☐CORRESPONDENCE: Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/Zip ☐Estelle Ross, Kobra International, Ltd.  
525 Seventh Avenue, 20th Floor  
New York, NY 10018

John Smith and the firm's telephone number (212) 719-9200

Fax number (212) 869-1938

E-mail

CERTIFICATION: I, the undersigned, hereby declare that I am the

check only one ☐

- ☐ author  
☐ other copyright claimant  
☐ holder of exclusive rights  
☐ authorized agent for Kobra International Ltd.

Name of owner or other copyright claimant, or owner of exclusive rights. Name of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date: If this application gives a date of publication in space 3, do not sign and submit it before that date.

G. Roxanne Blings

Date 12/26/06

Certificate will be mailed in window envelope to the address:

Name ☐  
 Estelle Ross, Kobra International, Ltd.  
 Address ☐  
 525 Seventh Avenue, 20th Floor  
 City/State/Zip ☐  
 New York, NY 10018

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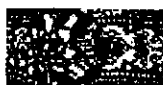


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Quantity:

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### MORE CHOICES



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